

ORIGINAL

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA
3

4 NATIONAL HEALTHCARE SERVICES, : Civil Action
5 Plaintiff, : No. 02-CV-3600
6 vs. :
7 PENN TREATY AMERICAN CORPORATION :
8 Defendants. :

9
10 - - -
11 Thursday, October 30, 2003
12 Philadelphia, Pennsylvania
13 - - -

14 Oral videotaped deposition of JANE M. BAGLEY, ESQUIRE,
15 taken at the Law Offices of FOX ROTHSCHILD, LLP, 2000
16 Market Street, beginning at approximately 10:00 a.m., on
17 the above date, before Margaret M. Reihl, RPR, CRR, CSR
18 and Commissioner of Deeds.

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21
22 MARGARET M. REIHL
23 Certified Shorthand Reporter
24 80 Annapolis Drive
25 Sicklerville, New Jersey 08081
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1 with Jackie on getting reports, all the stuff that
2 Neal used to do. Herb was sort of taking a back seat
3 at that time. He wasn't really involved as much and
4 Neal used to handle this stuff and now it seemed like
5 Callahan was handling all that.

6 Q. Did you ever make any inquiry or did anyone at
7 Penn Treaty, to your knowledge, make any inquiry as to
8 the scope of the services that Mr. Callahan was
9 performing on behalf of National Healthcare Services?

10 A. When?

11 Q. At any time?

12 A. Well, they had a lot of -- they had Web Barth
13 doing a lot of their stuff too, so they never told us
14 who he was that was doing a lot of their work, but so
15 was Web Barth and Michael Hauert.

16 Q. Do you know if Mr. Callahan's work in
17 fulfillment and service was with Mr. Barth and not
18 with National Healthcare Services?

19 MS. SPECTOR: Objection. You can
20 answer.

21 THE WITNESS: I don't know. I know
22 that Web Barth was contracted through Neal and Herb.

23 (Document marked for identification
24 as Bagley Deposition Exhibit Number 7.)

25 MR. RIVERA-SOTO: Let me show you what

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1 I have marked as Bagley-7. I ask you to take a look
2 at that.

3 And Bagley-7, for the record, is a
4 series of e-mails on two pages, the earliest of these
5 e-mails is dated March 23, 2001 and the latest one is
6 dated March 26, 2001.

7 BY MR. RIVERA-SOTO:

8 Q. Did I fairly describe Bagley-7?

9 MS. SPECTOR: Objection. You can
10 answer.

11 THE WITNESS: Yes.

12 BY MR. RIVERA-SOTO:

13 Q. Have you ever seen Bagley-7 before?

14 A. Not to my recollection.

15 Q. Okay. Let us go to the earliest of the
16 E-mails, which is the one that starts at the bottom of
17 the first page and goes into the second. Are you with
18 me?

19 A. Yes.

20 Q. Now, that E-mail is from WEBIII@aol.com; is it
21 not?

22 MS. SPECTOR: Objection. The document
23 speaks for itself. You can answer.

24 THE WITNESS: Yes.

25 BY MR. RIVERA-SOTO:

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1 Q. When was it sent?

2 MS. SPECTOR: Objection. You can
3 answer.

4 THE WITNESS: It looks like March 23rd,
5 2001.

6 BY MR. RIVERA-SOTO:

7 Q. And to whom was it sent?

8 A. To Jackie Frantz.

9 Q. And who is Jackie Frantz?

10 A. She works at Penn Treaty, in the commission
11 and billing department.

12 Q. Were copies of that E-mail sent to anybody?

13 A. Yes.

14 Q. Who was it sent to?

15 A. The E-mail addresses are "CALLAHANKIDS,
16 m.hauert, Hesassociates, nforman, jbell and klannen."

17 Q. Now, let's try to work our way through this.
18 Do you know who WEBIII@aol.com is?

19 A. Web Barth.

20 Q. How about CALLAHANKIDS@aol.com?

21 A. Well, when I got Tracy's memo in August, I
22 realized that was Mike Callahan.

23 Q. How about m.hauert?

24 A. That's Mike Hauert.

25 Q. And who does Mr. Hauert work for?

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1 A. I don't know.

2 Q. Do you know if he works for National
3 Healthcare Services?

4 A. I don't know. That was a name that came later
5 in the game. That was a marketing issue, I believe.

6 Q. How about Hesassociates@aol.com?

7 A. I think that was one of Herb Schwartz's
8 E-mails.

9 Q. How about nforman@nwlink.com?

10 A. Neal Forman, I believe.

11 Q. How about jbell@bestbenefits.com?

12 A. I don't know J. Bell.

13 Q. Do you know what the E-mail address
14 bestbenefits.com refers to?

15 A. I think that's DDS' E-mail.

16 Q. And how about klannen@bestbenefits.com?

17 A. That would be Kathy Lannen, who I mentioned
18 earlier.

19 Q. And she's at DDS, correct?

20 A. Yes.

21 Q. Now, the text of this E-mail states, and I
22 quote, "Jackie, here are a few areas to clarify,
23 please: 1. First of all, we have a new exec helping
24 to manage our fulfillment and service job. His name
25 is Mike Callahan (callahankids@aol.com) and I would

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1 appreciate it if you would include him in your E-mail
2 traffic to Mike Hauert and me."

3 First of all, did I read that correctly?

4 MS. SPECTOR: Objection.

5 THE WITNESS: Yes.

6 BY MR. RIVERA-SOTO:

7 Q. I ask you to pull up Bagley-5.

8 A. Okay.

9 Q. And I would like you to compare the text of
10 Bagley-5 that is bolded with the paragraph in Bagley-7
11 that is numbered Number 1 and tell me whether they are
12 identical?

13 A. Yes, they appear to be.

14 Q. Do you have any doubt whatsoever that they are
15 identical?

16 A. No, the words are the same.

17 Q. Including typographical errors?

18 A. The words are the same, yes.

19 Q. So any error that appeared in Bagley-7 also
20 appears in Bagley-5?

21 MS. SPECTOR: Objection.

22 THE WITNESS: I'm looking for an error.

23 (Witness reviews document.) It looks to be the same.

24 BY MR. RIVERA-SOTO:

25 Q. Now, the E-mail on Bagley-7 where that

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1 language appears is dated March 23, 2001?

2 MS. SPECTOR: Objection.

3 THE WITNESS: Yes.

4 BY MR. RIVERA-SOTO:

5 Q. And the E-mail from Ms. Levit-Sussman to you
6 that is Bagley-5 that copies that same language is
7 dated August 20, 2001; is it not?

8 A. Yes.

9 Q. Why the delay?

10 A. I don't know.

11 MS. SPECTOR: Objection.

12 BY MR. RIVERA-SOTO:

13 Q. Now, on Bagley-7, immediately above the E-mail
14 we were just describing, there's an E-mail from Jackie
15 Frantz at Penn Treaty to Web Barth and also to Jackie
16 Frantz at Web Treaty -- at Penn Treaty, with copies to
17 Callahankids@aol.com, m.hauert@att.net,
18 Hesassoc@aol.com, nforman@nwlink.com,
19 jbell@bestbenefits.com and klannen@bestbenefits.com
20 dated March 26, 2001, correct?

21 A. Yes.

22 Q. And the first three lines say, and I quote,
23 "Hi Web! Hope all is well. I will add Mike Callahan
24 to our list of contacts," correct?

25 MS. SPECTOR: Objection.

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1 THE WITNESS: Yes.

2 BY MR. RIVERA-SOTO:

3 Q. And that is dated March 26, 2001; is it not?

4 MS. SPECTOR: Objection.

5 THE WITNESS: Yes.

6 BY MR. RIVERA-SOTO:

7 Q. And Ms. Frantz is an employee of Penn Treaty,
8 sending an E-mail from a Penn Treaty address, correct?

9 A. Yes.

10 Q. Can you tell me what occurred between
11 March 26, 2001 and August 20, 2001 that caused
12 Ms. Tracy Levit-Sussman to send you her E-mail which
13 is marked Bagley-5?

14 A. I don't know. I just received it in August.

15 Q. Have you ever seen Bagley-7 before today?

16 A. Not that I recall.

17 Q. Did you see it when you were preparing for
18 your deposition here today?

19 MS. SPECTOR: I instruct you not to
20 answer based on Mr. Rivera-Soto's similar instruction
21 in a prior deposition, which I believe at that time
22 was inappropriate, but, given the fact that that's his
23 view of what's appropriate, I will instruct you not to
24 answer.

25 BY MR. RIVERA-SOTO:

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1 Q. Did you see it at any time prior to preparing
2 for the deposition here today?

3 A. Not that I recall.

4 Q. Did you request that Ms. Tracy Levit-Sussman
5 send you the E-mail that's marked Bagley-5?

6 A. I don't believe I knew it existed.

7 Q. Bagley-5?

8 A. Oh, Bagley-5. Well, I received it in August.

9 Q. Not my question. My question is did you
10 request it?

11 A. I don't know. I don't believe so. She sent
12 it to myself and to Derrick, it wasn't just to me.

13 Q. Do you know why she sent it to you?

14 MS. SPECTOR: Objection. Asked and
15 answered and, also, objection as to form. You can
16 answer.

17 THE WITNESS: I don't know why.

18 BY MR. RIVERA-SOTO:

19 Q. By August 20 of 2001 had you had any
20 conversations with Thomas Sadler concerning the
21 relationship between Penn Treaty on the one side and
22 National Healthcare Services on the other?

23 MS. SPECTOR: Right now you can answer
24 yes or no to that.

25 THE WITNESS: What was the beginning